

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IGNACIO PEREZ,

Plaintiff,

-against-

C.O. S. BOMBARD, CAPE VINCENT C.F.;
JOHN DOES 1, 2; SUPERINTENDENT, CAPE
VINCENT; A. ANNUCCI, COMMISSIONER
NYSDOCCS,

Defendants.

23-CV-0799 (LTS)

TRANSFER ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated in Fishkill Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his federal constitutional rights when he was incarcerated in Cape Vincent Correctional Facility (“Cape Vincent”). Named as Defendants are Cape Vincent Correction Officer S. Bombard, the Superintendent of Cape Vincent, New York Department of Corrections and Community Supervision Acting Commissioner Anthony Annucci, and two John Doe Cape Vincent correction officers. For the following reasons, the Court transfers this action under 28 U.S.C. § 1406 to the United States District Court for the Northern District of New York.

DISCUSSION

Under 28 U.S.C. § 1391(b), a civil action may be brought in

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.

For venue purposes, a “natural person” resides in the district where the person is domiciled, and an “entity with the capacity to sue and be sued” resides in any judicial district where it is subject to personal jurisdiction with respect to the civil action in question. *See* 28 U.S.C. § 1391(c)(1), (2).

Plaintiff alleges that Defendants used excessive force against him when he was incarcerated in Cape Vincent. He does not plead the residence of any of the defendants, only asserting that the alleged events giving rise to his claims occurred in Cape Vincent. Cape Vincent is located in Jefferson County, New York, which is in the Northern District of New York. *See* 28 U.S.C. § 112(a). Because all Defendants except DOCCS Commissioner Annucci are employed at Cape Vincent,¹ and the alleged events occurred in Cape Vincent, from the face of the complaint, it is clear that venue is not proper in this court under Section 1391(b)(1), (2).

Under 28 U.S.C. § 1406, if a plaintiff files a case in the wrong venue, the court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). Plaintiff’s claims arose in Jefferson County, New York, which is in the Northern District of New York. *See* 28 U.S.C. § 112(a). Accordingly, venue lies in the Northern District of New York, 28 U.S.C. § 1391(b)(2), and in the interest of justice, the Court transfers this action to the United States District Court for the Northern District of New York, 28 U.S.C. § 1406(a).

CONCLUSION

The Clerk of Court is directed to transfer this action to the United States District Court for the Northern District of New York. Whether Plaintiff should be permitted to proceed further

¹ Plaintiff lists Annucci’s employment address as Albany, New York, which is also within the Northern District of New York. *See* 28 U.S.C. § 112(a).

without prepayment of fees is a determination to be made by the transferee court. A summons shall not issue from this court. This order closes this case.

The Court certifies, pursuant to 28 U.S.C § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: February 1, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge